



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201117048

JAN 31 2011

Uniform Issue List: 408.03-00

SE: T, EP: RA: T2

Legend:

Taxpayer = *****

Plan = *****

IRA X = *****

IRA Y = *****

Amount 1 = *****

Amount 2 = *****

Date 1 = *****

Date 2 = *****

Dear *** *****:

This is in response to your ruling request dated October 15, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 54, represents that she had originally rolled over funds from the Plan into IRA X, a qualified individual retirement arrangement ("IRA") established and maintained under the rules of section 408 of the Code. Taxpayer asserts that her failure to

accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) of the Code was because she thought the rollover period was 90 days instead of the 60 days.

Because of the decline in the value of her retirement account, Taxpayer removed the funds from IRA X on Date 1. When Taxpayer A received the distribution of Amount 1 from IRA X, she used some of the funds for a down payment for a house, and placed the remainder of the distribution in the form of three checks totaling Amount 2 in a safe deposit box. Taxpayer asserts that she intended to execute an IRA rollover of Amount 2, within the rollover period but failed to accomplish a rollover because she was searching for a custodian where she could deposit the funds and she mistakenly thought the rollover was 90 days.

On Date 2, Taxpayer opened IRA Y with another custodian and deposited the three checks into IRA Y, where the funds remain.

Taxpayer asserts that her failure to accomplish a rollover into another retirement account within the 60-day period prescribed by section 408(d) of the Code resulted from no particular event that occurred beyond her control. However, Taxpayer asserts that because the checks were never deposited and the funds were deposited into an IRA soon after the 60-day period ended, her request for a waiver of the 60-day rollover requirement should be granted.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or

distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of Section 408(d) do not apply to any amount required to be distributed under Section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that at the time Taxpayer withdrew Amount 1 from IRA X, she intended to execute an IRA rollover with a portion of the funds. However, within 60 days of the distribution, Taxpayer failed to accomplish a rollover because she was searching for a custodian where she could deposit the funds and she mistakenly thought the rollover could be performed within a longer period of time.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability.

Although the Taxpayer represented that she had intended to deposit the funds into an IRA, the Taxpayer admitted that her own actions and mistaken knowledge of the law caused the failure of the deposit. Taxpayer has not provided sufficient evidence that any of the factors in Revenue Procedure 2003-16 caused her to fail to accomplish a timely rollover.

Accordingly, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact *** ***** (Government Identification Number **-*****) by phone at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose